IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.534 OF 2005

Haridas Shankar Chavan .. .. Appellant
Versus
Ramchandra Dashrath Pawar & Ors... Respondents

MR.P.R.Arjunwadkar for appellant
Mr.R.V.More for respondent Nos.1 to 4

WITH

SECOND APPEAL NO.538 OF 2005

Haridas Shankar Chavan .. .. Appellant
Versus
Ramchandra Dashrath Pawar & ors... Respondents

Mr.P.R.Arjunwadkar for appellant
Mr.R.V.More for respondent nos.1 to 4.

CORAM : P.V.KAKADE, J.

DATE : 8TH SEPTEMBER, 2005

P.C.:

1. Both these appeals are heard and being disposed of by this common judgment as they arise out of common judgment of the lower appellate court and parties are same as well as the suit property and issues involved are also the same.

. The present appeals are preferred by the appellants

against the judgment and order passed by Addl. District Judge, Pandharpur in Civil Appeal No.169 of 2003 and Reg.Civil Appeal No.170 of 2003, which came to be allowed setting aside the judgment and order passed by Civil Judge, Junior Division, Kagal in R.C.S. No.555/199, which was dismissed and R.C.S. No.477 of 2003, which was decreed and present respondent Ramchandra was permanently restrained from obstructing the present appellant's possession over the suit bearing No.81/1.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The R.C.S. No.555 of 1999 was filed by Ramchandra the present respondent for declaration and perpetual injunction against the appellant and present appellant filed the suit for perpetual injunction against the plaintiff and his other brothers from using the suit property. The entire dispute revolved around right of way to approach, which suit way alleged to be passing through the properties of parties.

. The learned trial judge adjudicated the dispute

on merits and came to the conclusion that the present respondent had a right of way to approach Gat No.81/2 through land Gat No.81/1 by the southern side of Bandh of Gat No.81/1 from Chincholi to Gursale road. However, it was held that the plaintiff failed to prove the obstruction by the defendant in his Vahivat, and therefore, the plaintiff was held not entitled for declaration and injunction. In Reg. Civil Suit No.477 of 1999 it was held that the defendant in that case had right of way from southern side of Gat No.81/3 to approach to their land bearing Gat No.81/2 situated within the jurisdiction of village Chincholi (Bhose), and it was further proved that the defendant in that suit land obstructed the plaintiff's possession and had threatened to create a new way in Gat No.81/1 and as such suit for injunction came to be decreed. The appeals were carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that both the appeals preferred by the rival parties deserved to be allowed and it was declared that the appellant-Ramchandra was entitled to use the southern portion of land block no.81/1 for approaching public road going to Gursale from Chincholi (Bhose) by way of easement of necessity till such

necessity existed. The respondent was perpetually restrained from causing obstruction to the appellant from the user of the way through southern portion of the land block no.81/1 upto public road from their land block no.81/2 and thereby the lower court judgment in R.C.S. No.477 of 2002 was set aside and suit was dismissed. Hence the present appeals.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in both the appeals. The learned counsel for the appellants took me through the judgments of both the courts and submitted that the lower appellate court judgment did not consider the evidence on record pertaining to the alternate way which was available to the present respondent and as such to that extent it was perverse. It was further submitted that the evidence on record was not taken into account by the lower appellate court, especially when the choice did exist for the present appellant to utilise one of the two ways and therefore, the order affecting the appellant’s right qua his land regarding the suit way was not justifiable and on this count the appeals, according to the learned counsel, deserve consideration.

. However, in this regard it must be noted that on perusal of the judgment of the lower appellate court that not only the factual aspect of evidence on record are properly appreciated but those are appreciated in reasonable and proper manner after taking into account all the relevant evidence on record and therefore, I do not agree with the learned counsel for the appellant when he submits that the lower appellate court's judgment is perverse as the evidence on record is not at all appreciated. This aspect, is not correct particularly, in view of the admission on the part of the appellants that there is no way from land block no.81/2 which meets "Malwat" way passing from land block no.81/3. It is also to be noted that during the cross examination, he has admitted that at the time of inspection, "Malwat" way was passing from land block no.81/3 which was not found at all and it is admitted that land block no.81/2 was at higher level as compared to land block no.81/3. The perusal of the judgment of the lower appellate court also reveals that it has taken into account all relevant aspect of the available evidence in order to hold the present respondent has right of way as submitted.

. In this regard it must be noted that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal, especially when it is found that the appreciation of evidence by the lower appellate court is reasonable and proper.

5. Under these circumstances I find no merits in the appeals and both appeals therefore, stands dismissed with no order as to costs. Consequently Civil Application Nos.970 of 2005 and 972 of 2005 also stands dismissed with no order as to costs.